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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,185	10/12/2000	Igor Philip Passos Proglhof	J&J 1796	3467
7590	10/24/2003		EXAMINER	
Audley A Ciamporcer One Johnson & Johnson Plaza New Brunswick, NJ 08933-7003			ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	
			DATE MAILED: 10/24/2003	
			13	

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	09/673,185	Applicant(s)	PROGLHOF, IGOR PHILIP PASSOS
Examiner	C. Lynne Anderson	Art Unit	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 20 August 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-9 and 14-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 and 14-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some,\* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9, 14-17, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pietsch (DE 24 23 790) in view of Leutwyler et al. (5,911,712).

Pietsch discloses all aspects of the claimed invention with the exception of the tampon comprising a rolled up web of material being compressed to form pleats.

Pietsch discloses a tampon, as shown in figure 1, having a removal cord comprising synthetic fibers, as described on page 5, lines 25-28. The removal cord is heat shrunk to 20% of its original size, as described on page 5, lines 1-4. In use the removal cord is extended to its original size, as described on page 5, lines 18-24, and therefore has an extensibility of 80%. Shrinking the removal cord keeps the removal cord from being damaged during further processing, as described on page 5, lines 4-10. The shrinking of the removal cord is fully capable of preventing damage during a further processing step involving compression.

With respect to claims 14-17, the texture of the removal cord created by the heat crimping causes the removal cord to inherently have a two-phase tensile stress-strain curve having an inflection point between the two phases. All stress-strain curves have a

Young's modulus, and the Young's modulus for the first phase will be smaller than that of the second phase.

With respect to claims 23 and 24, the removal cord has an interior portion and an exterior portion, the interior portion being contained within the body of the tampon, as shown in figure 1, and described on page 8, lines 17-30.

Leutwyler discloses a tampon 20, as shown in figure 1, comprising a rolled up web of absorbent material, as described in column 5, lines 14-16. The tampon 20 is compressed in a manner that pleats the web, as described in column 5, lines 16-25, forming ribs 64 and longitudinal grooves 180, as shown in figure 5. The formation of the ribs 64 and longitudinal grooves 180 helps prevent leakage, as described in column 4, lines 5-10.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the tampon of Pietsch with the rolled up, grooved configuration of Leutwyler, in order to reduce leakage.

Claims 5-8 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pietsch (DE 24 23 790) in view of Leutwyler et al. (5,911,712) as applied to claim 1 above, and further in view of Brown et al. (6,142,984).

With respect to claims 5, 6, 11, 12, 18, and 19, Pietsch discloses all aspects of the claimed invention but remains silent as to the design of the texture. Brown discloses a tampon comprising a removal cord having a texture, making the removal cord easier to grip, and therefore use, as described in column 1, lines 44-46. The removal cord may be textured by crocheting, as disclosed in column 2, lines 35-39,

which results in a helical texture, or by braiding, as disclosed in column 2, lines 35-39, which results in a zigzag texture.

It would be obvious to one of ordinary skill in the art at the time of invention to construct the removal cord of Peitsch with the texture of Brown to allow for easier use of the tampon.

With respect to claims 7 and 8, Peitsch discloses all aspects of the claimed invention but remains silent as to the number of cables and fibers in the removal cord. Brown discloses a tampon comprising a removal cord constructed of two or more cables, as described in column 3, lines 65-67. The cables comprise 50 fibers, as disclosed in column 4, lines 11-13. This results in a removal cord having a desirable denier, having substantial strength to withstand pulling during removal of the tampon.

It would be obvious to one of ordinary skill in the art at the time of invention to construct the removal cord of Peitsch with the number of cables and fibers taught by Brown, in order to have a substantially strong removal cord.

### ***Response to Arguments***

Applicant's arguments filed 20 August 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that Pietsch fails to disclose the cord having an extensibility of greater than about 25% to prevent damage to the cord during compression, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is

capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The claimed invention fails to recite structural difference that would make the claimed invention patentably distinguishable over the tampon and cord disclosed by Pietsch. The extensibility of greater than about 25% of the cord of Pietsch is fully capable of protecting the cord during compression.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

WA  
cla  
October 22, 2003

  
WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700